UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/986,683	11/09/2001	Jody J. Shapiro	1968.0030000	5864

7590   07/02/2007

Frommer Lawrence & Haug LLP
745 Fifth Avenue
New York, NY 10151

EXAMINER
ISMAIL, SHAWKI SAIF

ART UNIT	PAPER NUMBER
2155	

MAIL DATE	DELIVERY MODE
07/02/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

	Application No.	Applicant(s)
	09/986,683	SHAPIRO, JODY J.
Office Action Summary	Examiner	Art Unit	
	Shawki S. Ismail	2155	.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>25 May 2007</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>47-65</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>47-65</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

RESPONSE TO AMENDMENT

1.   This communication is in response to the amendment received on May 25, 2007.

Claims 47, 53, 57, 61, and 63 have been amended.

Claims 1-46 have been cancelled.

Claims 47-65 are pending.

The New Grounds of Rejection

2.   Applicant's amendment and arguments received on May 25, 2007 have been

fully considered, however they are deemed to be moot in view of the new grounds of

rejection.

Claim Rejections - 35 USC § 112

3.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly
> claiming the subject matter which the applicant regards as his invention.

4.   Claims 47-65 are rejected under 35 U.S.C. 112, second paragraph, as being

incomplete for omitting essential steps, such omission amounting to a gap between the

steps. See MPEP § 2172.01. The omitted steps are: the step of measuring the

connection speed and determining the preferred connection speed so as to be able to

describe and store them in the claimed cookies.

5.   The terms measured and preferred in claim 47-65 are a relative term which

renders the claim indefinite. The terms measured and preferred are not defined by the

claim, the specification does not provide a standard for ascertaining the requisite

degree, and one of ordinary skill in the art would not be reasonably apprised of the

scope of the invention. The term measured is unclear because the claims does not

specify how it was measured and the term preferred is unclear because we don't know

what that entails. Preferred in terms of what (to what degree) and who (preferred by the

user, system, or provider).

Claim Rejections - 35 USC § 103

6.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or
> described as set forth in section 102 of this title, if the differences between the subject
> matter sought to be patented and the prior art are such that the subject matter as a
> whole would have been obvious at the time the invention was made to a person having
> ordinary skill in the art to which said subject matter pertains. Patentability shall not be
> negatived by the manner in which the invention was made.

7.   Claim 47-65 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Hegde et al., (Hegde) U.S. Patent No. **6,925,495** and in view of **Doty, Jr., Jr.** U.S.

Patent No. **6,795,863.**

Hegde teaches delivering on-demand content to requesting device by

determining attributes of the requesting device in order to increase performance of the

delivered content. The attributes include information relating to the operating system,

media player, bandwidth parameters and the like.

Doty, Jr., Jr., Jr. teaches a system for distributing a plurality of different video

data streams across a network to a plurality of client recipient computers. The system

includes an encoder for encoding digitized data into a plurality of different video data

stream formats and a smart server for determining when a client recipient computer

accesses the e-mail system and the type of a video player residing on the client

recipient computer. Once the determination has been made a cookie that contains

client settings is set at the client device and an optimum video data stream format for the video player of the client recipient computer is distributed to the client recipient computer

8.   As to claims 47, 53, 61 and 63, Hegde teaches a method of transferring requested media data over a network comprising:

receiving a request for media data from a client device (col. 9, lines 11-17, client device request content from Content Delivery Network (CDN));

sending a detection code to the client device (col. 10, lines 5-11, Server 605 sends code that is to be executed on the client device and used for determining basic attribute information of the client device);

detecting, at the client side, the media player information available on the client device by the detection code (col. 10, lines 5-11 and col. 10, lines 27-36, the code is used for determining basic attribute information which includes the type of player at the client device);

fetching the requested media data (col. 9, lines 17-35, CDN fetches the request media either from the CDN or from the origin server); and

transferring the requested media data suitable for the detected media player information to the client computer over the network (col. 9, lines 17-35 and col. 10, lines 34-37, the content is customized according to the attributes of the client device and delivered to the client device).

Hegde does not explicitly teach storing at the client sides the media player information in one or more cookies, verifying that they have valid settings, sending an

acknowledgment indicating that said one or more cookies are sufficient to format the requested media data, wherein the cookies describe a measured connection speed and store a preferred connection speed.

Doty, Jr., Jr. teaches a system for distributing a plurality of different video data streams across a network to a plurality of client recipient computers. The system includes an encoder for encoding digitized data into a plurality of different video data stream formats and a smart server for determining when a client recipient computer accesses the e-mail system and the type of a video player residing on the client recipient computer. Once the determination has been made a cookie that contains client settings is set at the client device and an optimum video data stream format for the video player of the client recipient computer is distributed to the client recipient computer. Doty, Jr. further teaches a bandwidth detection method to be able to determine the client speed. Doty teaches that the reason for not setting a cookie here is to allow the user to see the best possible video based on his connection, which can often change depending on network traffic, time of day connecting, etc. (col. 6, line 57 – col. 7, line 21).

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to incorporate the teaching of Doty, Jr., Jr. into the invention of Hedge in order to be able to store information on a user's computer by a Web site so preferences are remembered on future requests, which will reduce processing time and increase efficiency in the overall client/server system.

9.   As to claims 48, 54, 59, 62 and 65, Hegde teaches the method of claim 47, 53, 57, 61 and 63, respectively, where in the media player information includes one or more media player types available on the client device (col. 10, lines 27-36).

10.   As to claims 49, 56, 60 and 64, Hegde teaches the method of claim 47, 53, 57 and 63, respectively, wherein the media player detection code comprises logic for a string search of mimetype (col. 10, lines 27-36, the code is used to detect what media player is available on the client device from among a plurality of media players).

11.   As to claim 50, 55 and 58 Hegde teaches the method of claim 47, 53 and 57, respectively, further comprising storing the detected media player information on the client device (col. 12, lines 17-42).

12.   As to claim 51 Hegde teaches the method of claim 47, further comprising conducting bandwidth measurement (col. 13, lines 12-20).

13.   As to claim 52 Hegde teaches the method of claim 47, wherein the suitable media data is transcoded based on the detected media player information (col. 10, lines 30-36).

Response to Arguments

14.   Applicant's arguments have been fully considered but they are not deemed to be persuasive. Applicant argues in substance that:

Argument (A):   Hodge in view of Doty, Jr. do not teach verifying said one or more cookies to have valid settings and are sufficient to format the requested media data.

Response: Applicant is reminded that the claims are given their broadest reasonable interpretation. The claim language merely recites verifying the cookies to have valid

settings and sending an acknowledgment indicating that they are sufficient to format the requested media data. Doty, Jr. teaches wherein the cookie is set at the client device to record user settings and return them to the server. The server determines what capabilities the client device contains, whether or not the player plug-ins are present based on the information retrieved from the cookies. The server verifies the information it receives from the cookies (received acknowledgment) to determine if the client device has valid settings and are able to play the media data, otherwise they user is sent to a smart download page for installing the appropriate software that they need to play the media data. Doty, Jr's cookies that are set at the client device are used for the purpose of determining by the server the user capabilities and whether or not the user needs to be directed a download page (col. 6, line 57 – col. 7, line 21) is the verification and acknowledgment process that the server goes through prior to transmitting the requested data to the user and as such meets the scope of the claimed limitation.

Argument (B): Hodge in view of Doty, Jr. do not teach wherein the cookies describe a measured connection speed and store a preferred connection speed

Response: Doty, Jr. teaches:

> The bandwidth detection is a non-intrusive quick test that is done each time a user visits the website. <u>The reason for not setting a cookie here is to allow the user to see the best possible video based on his connection, which can often change depending on network traffic, time of day connecting, etc.</u>
> (See Doty col. 7, lines 11-21, emphasis added)

Applicant's amendments merely recite where the cookie stores a preferred connection speed. Doty, Jr. on the other hand, does bring up the fact that it is well known to set cookies so that the bandwidth detection is not done each time a user visits the website. Doty, Jr. then explain why it would not be prudent to set the cookies so as to <u>allow the</u>

user to see the best possible video based on his connection, which can often change depending on network traffic, time of day connecting, etc. Applicant's amendments do not overcome the problem found in the prior art with regards to the Doty, Jr. reference but simply disregard the disadvantages and drawbacks of setting the cookies that contain the detected bandwidth. The mere fact that a reference teaches away from an expected shortcomings or drawbacks of a method goes to teaching such method, unless the method in question overcomes the disadvantages and shortcomings known in the art. Applicant's amendment teaches the well-known method in the art setting the cookies that contain the detected bandwidth along with the known disadvantages and shortcomings and does not remedy these drawbacks as currently amended. Therefore, Hodge in view of Doty, Jr. still meets the scope of the claimed limitation and thus render the claims obvious.

15.   Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shawki S Ismail whose telephone number is 571-272-3985. The examiner can normally be reached on M-F 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached at 571-272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Shawki Ismail
Patent Examiner
June 18, 2007

SALEH NAJJAR
SUPERVISORY PATENT EXAMINER